

REMARKS

In response to the Final Office Action dated July 19, 2006, Applicant respectfully requests reconsideration.

Finality of Rejection

Applicant submits that the finality of this rejection is premature. The Examiner has asserted a new ground of rejection that is not necessitated by Applicant's amendment of the claims in the previous response. In Applicant's previous response dated December 23, 2006, Applicant made minor amendments to dependent claims 3, 4, 22, 23 and 35 for clarification purposes and added new independent claim 37. Applicant, however, did not make any substantial amendments or any amendments whatsoever to the other independent claims. Thus, the new grounds for the rejection as to claims 1-36 could not have been necessitated by Applicant's amendments and therefore the final rejection based on the new reference (U.S. Pub. No. 2002/0071545 to Burns) is premature. Applicant respectfully requests that the Examiner withdraw the finality of the rejection and consider the arguments contained in this response.

Claim Rejection Under 35 U.S.C. § 103

In the Final Office Action, the Examiner rejected claims 1-34 under 35 U.S.C. § 103(a) as being unpatentable over Lynk (EP 0321672) in view of Burns (U.S. Pat. No. 2002/0071545) and further in view of MPEP 2144.03 and rejected claims 35-37 under 35 U.S.C. § 103(a) as being unpatentable over Lynk (EP 0321672) in view of MPEP 2144.03. Applicant respectfully traverses the rejections. The applied references fail to disclose or suggest the inventions defined by Applicant's claims, and provide no teaching that would have suggested the desirability of modification to arrive at the claimed invention.

Claims 1, 12, 20, 26, 33 and 34

For purposes of brevity, Applicant will discuss the rejection as it applies to claim 1. Substantially the same arguments apply to independent claims 12, 20, 26, 33 and 34. With reference to independent claim 1, the applied references lack any teaching that would have suggested a method comprising transmitting a request for access to a broadcast link in a point-to-

multipoint communication system, transmitting audio with the access request, and terminating the audio transmission in the event the access request is denied.

The Examiner characterized Lynk as describing transmitting and receiving a request for access to a broadcast link in a point-to-multipoint communication system. The Examiner recognized, however, that Lynk fails to teach either transmitting or receiving audio with the access request or terminating the audio transmission in the event the access request is denied, as required by Applicant's claims.

To satisfy the shortcomings of Lynk, the Examiner cited Burns as describing transmitting audio with an access request and took Official Notice that it is well known in the art to terminate an audio transmission in the event an access request is denied. Applicant respectfully submits that the Examiner has misinterpreted either the references or the requirements of Applicant's invention.

1. Transmission or Reception of Audio with Access Request

In support of the rejection, the Examiner characterized Burns as describing transmitting audio with the access request. The Examiner referenced paragraph 54 of Burns, characterizing the paragraph as describing transmitting audio tones that act as access requests. The Examiner appears to have misinterpreted the content of the Burns reference.

Burns is directed to Internet browsing, and makes no mention of point-to-multipoint audio communication. Specifically, Burns describes using a uniform user interface (such as a numeric touchpad) on computing devices having differing hardware and software configurations. Each button provides access to a specific class of Internet content (e.g., websites, email, etc.), thus allowing the user to associate particular classes of Internet content with specific keys on a touchpad in any variety of hardware or software configurations. Again, Burns provides no teaching even remotely relevant to a point-to-multipoint audio communication system, much less pertinent to the generation of requests for access to a broadcast link in such a system.

Paragraph 54 of Burns describes processing of the selection of a key on a touchpad. When the requesting device is a telephone (e.g., device 210), depressing the key results in an audio tone (DTMF tone) which is converted to an HTML request for a particular class of information associated with the key. The Examiner apparently equated the converted audio tones with audio information sent with (or acting as) a request for access to a broadcast link.

However, the audio tones described by Burns act as a request for information, e.g., in the form of a web page, and serve no purpose related to access to a broadcast link.

The Burns device does not request access to a communication link. Indeed, Burns does not even concern a communication channel for which access is limited. Instead, the Burns device requests specific information over a communication link to which the Burns device already has access. In fact, access to the communication link is not a concern in the Burns reference. Therefore, the concept of an access request, particularly in relation to the DTMF tones described by Burns, is not even applicable to Burns. Accordingly, because Burns fails to teach or suggest transmitting a request for access to a broadcast link, it likewise would not have suggested transmitting audio with (or that acts as) an access request, as required by Applicant's claims.

In addition, the Examiner failed to identify any teaching in the prior art of a motivation to combine the teachings of the applied references. The Examiner did not explain why one of ordinary skill in the art would have even considered Burns relevant to point-to-multipoint communication. Burns is in a completely different field of endeavor, i.e., delivery of Internet content. Moreover, Burns does not address any problem reasonably pertinent to broadcast link access in a point-to-multipoint system. Generation of a request for information based on a DTMF tone associated with a key bears no relationship to generation of a request for access to a broadcast link in the point-to-multipoint system of Lynk. As described above, the Burns device fails to teach or suggest transmitting audio with (or that acts as) an access request because access to the communication channel is not a concern to Burns. Thus, one of ordinary skill in the art would not look to the system in Burns, which does not need to request access to a communication channel, to modify the access request of the Lynk system into an audio access request.

Furthermore, the audio tone in Burns is converted to HTML code before being sent to server 230. The request for information is therefore not audio, or even an audio tone, when it is transmitted and reaches the device that acts on the request (i.e., server 230). If the Burns system and the Lynk system were combined, the result would be an HTML code that is sent to an arbitration controller. An HTML code is not audio. Nor would HTML code serve as an access request to a broadcast link in a point-to-multipoint communication system. Thus, even if the Lynk system were somehow modified according to Burns, the result would not conform to the

claimed invention. Moreover, the resulting modification would make little if any sense in the Lynk system. In general, combining Burns and Lynk would be akin to attempting to fit a square peg in a round hole, but without even a discernible objective.

Compounding the glaring deficiencies in the Burns reference is the fact that neither Lynk nor Burns even appreciates the problems addressed by Applicant's claimed invention. In particular, one of ordinary skill in the art, in view of Burns and Lynk but without access to Applicant's disclosure, would have had no appreciation of the ability to reduce delay between transmission of an access request and transmission of the audio to be broadcast in a point-to-multipoint communication system. Burns make no mention of such a problem, much less a solution conforming particularly to Applicant's claimed invention. Even if Lynk were modified in view of Burns, the amount of delay between transmission of the access request and transmission of the audio to be broadcast would be the same, making any motivation to undertake such a modification highly suspect.

2. Termination of the Audio Transmission in the Event the Access Request is Denied

The Examiner also supported the rejection by taking Official Notice of "Lynk's admission where [it] is well known in the art of termination [of] the audio transmission in the event the access request is denied." The Examiner, however, failed to point to any such admission in Lynk and the Applicant is unable to find such an admission. The Examiner's Official Notice of the "admission" is mistaken, and thus Applicant traverses the Official Notice.

Lynk does not refer to terminating an audio transmission that has been transmitted with an access request in the event the access request is denied. Instead, Lynk describes the technique of storing voice data pending the outcome of a channel request. (Column 5, lines 24-29). Lynk requires the grant of the channel request before audio is transmitted. (Column 5, lines 35-38). This is a fundamental difference.

Clearly, the technique described in Lynk sends nothing at all if a communication path is not available, i.e., if an access request is denied. Therefore, it is incorrect to say that any audio transmission would be terminated by Lynk because, if an access request is not granted, there is simply no audio transmission. The Examiner recognized (and acknowledged) that Lynk fails to disclose sending audio with the access link. (Office Action, page 2). Logically, it is not possible to terminate an audio transmission that has never even commenced.

In fact, the approach described by Lynk represents virtually the opposite of that specified by Applicant's claims. In the Lynk system, the audio is stored until a communication channel is assigned rather than send an access request with audio, and then terminating the audio transmission when an access request is denied.

The Examiner offered no documentary evidence in support of the assertion of Official Notice. Applicant respectfully submits that the Examiner's unsupported finding of Office Notice is basis in the common knowledge of those skilled in the art. The fact at issue is not capable of instant and unquestionable demonstration as to not be in dispute. On the contrary, Applicant specifically disputes the Examiner's finding of Official Notice, and asserts that it is incorrect. Therefore, Applicant requests that the Examiner provide documentary evidence in support of the Official Notice in the next Office Action, or withdraw any rejection that relies on such Official Notice.

For at least these reasons, the Examiner has failed to establish a prima facie case for non-patentability of Applicant's claims 1, 12, 20, 26, 33 and 34 under 35 U.S.C. § 103(a). Withdrawal of this rejection is requested.

Claims 2-11, 13-19, 21-25, and 27-32

Claims 2-11 are dependent on claim 1, claims 13-19 are dependent on claim 12, claims 21-25 are dependent on claim 20 and claims 27-32 are dependent on claim 26, and are therefore in condition for allowance for the reasons set forth above. Furthermore, the applied references fail to teach or suggest many of the features set forth in the dependent claims.

For example, Lynk and Burns also fail to disclose or suggest transmitting audio from a wireless communication device before receiving an acknowledgement that an access request is granted, as set forth in claims 3, 15, and 22. Claims 4, 16, and 23 require that the audio is transmitted without receiving an acknowledgement that the access request is granted.

Lynk stores voice data pending the outcome of an access request, and then retrieves the voice data from memory for transmission if the access request is granted. In particular, Lynk describes the buffering of voice data when a subscriber initiates a transmission by depressing a push-to-talk (PTT) button, followed by delayed transmission of the voice data only upon receipt of a grant.

Again, Lynk requires the grant of an access request before audio is transmitted and, in that case, the audio includes buffered audio. In the passage cited by the Examiner (Column 5, lines 41-44), Lynk specifically states that the “buffer will hold the recorded voice until grant of the channel; then it will reproduce the voice information.” This passage appears to be directly contrary to the requirements of claim 3, 15, and 22. Accordingly, it is unclear why the Examiner referred to this portion of Lynk in the Office Action.

Contrary to claims 4, 16, and 23, Lynk requires the grant of an access request before transmitting the buffered voice data. In another passage cited by the Examiner (Column 7, lines 5-8), Lynk refers to the reproduction of voice data from a buffer as further speech continues to fill the buffer. This passage appears to be wholly irrelevant to the requirements set forth in claims 4, 16, and 23. In particular, the filling of a local buffer with speech data per Lynk provides no teaching concerning the relationship between audio transmission and the grant of access request.

For at least these reasons, the Examiner has failed to establish a *prima facie* case for non-patentability of Applicant’s claims 2-11, 13-19, 21-25, and 27-32 under 35 U.S.C. § 103(a). Withdrawal of this rejection is requested.

Claims 35-37

The Examiner rejected claims 35-37 under 35 U.S.C. § 103(a) as being unpatentable over Lynk (EP 0321672) in view of MPEP 2144.03. Applicant respectfully traverses the rejection. The applied references fail to disclose or suggest the inventions defined by Applicant’s claims, and provide no teaching that would have suggested the desirability of modification to arrive at the claimed invention.

Applicant is confused by the Examiner’s rejection. The Examiner rejected claims 35-37 over Lynk in view of MPEP 2144.03. In discussing his rejection, however, the Examiner relied on Burns (U.S. Pat. No. 2002/0071545) in addition to Lynk and MPEP 2144.03. Assuming that the Examiner meant to reject claims 35-37 under § 103 as being unpatentable over Lynk in view of Burns in further view of MPEP 2144.03, substantially the same arguments described above with respect to claims 1-34 are applicable to claims 35-37.

Therefore, for at least these reasons set forth above with respect to claims 1-34, the Examiner has failed to establish a prima facie case for non-patentability of Applicant's claims 35-37 under 35 U.S.C. § 103(a). Withdrawal of this rejection is requested.

CONCLUSION

All claims in this application are in condition for allowance. Applicant respectfully requests reconsideration and prompt allowance of all pending claims. Please charge any additional fees or credit any overpayment to deposit account number 17-0026. The Examiner is invited to telephone the below-signed attorney to discuss this application.

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